IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 1590/2007
(Pooran Ram Vs. State of Rajasthan)

Date of Order : 10/10/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Devendra Singh Dev for the petitioner.

BY THE COURT:-

This criminal misc. petition under Section 482 Cr.P.C. is directed against the order dated 01.09.2007 passed by Additional Sessions Judge (Fast Track) Anoopgarh (for short 'the revisional court' hereinafter) dismissing the revision petition filed by the petitioner against the order dated 11.1.2007 passed by Judicial Magistrate, First class, Anoopgarh (for short 'the trial court' hereinafter) taking cognizance of the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act' hereinafter).

I have heard learned counsel for the petitioner. Perused the order passed by both the courts below.

It is contended by learned counsel for the petitioner that notice demanding the cheque amount has not been served

upon the petitioner and therefore, the order taking cognizance is bad in law.

From the perusal of the order of the revisional court as also the order of the trial court, it appears that a cheque dated 15.10.2006 in the sum of Rs. 1,85,000/- was issued by the petitioner in favour of respondent No.2. The said cheque was presented to the bank within its validity period i.e. six months, and returned unpaid and dishonoured on account of insufficient fund to the account of the petitioner. Such intimation was received on 9.11.2006 by the respondent complainant. A statutory notice demanding the cheque amount was given through counsel by the respondent complainant to the petitioner and thereafter on failure to pay the cheque amount within the stipulated period as provided under Section 138 of the Act, filed a complaint under Section 138 of the Act. By order dated 11.1.2007, the trial court took the cognizance of the offence under Section 138 of the Act and issued process.

The requirement of Section 138 of the Act is giving of notice which has not been disputed by the petitioner. Section 138 (b) of the Act provides that the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, (within thirty days) of the receipt of information by him from the bank regarding the return

of the cheque as unpaid. In this view of the matter, the revisional court was justified in dismissing the revision petition.

No case for interference in the inherent jurisdiction under Section 482 Cr.P.C. is made out. The criminal misc. petition is therefore, dismissed.

(H.R.PANWAR),J.

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S.B.Cr. Misc. Stay Petition No. 1078/07
In
S.B.Criminal Misc. Petition No. 1590/2007

Date of Order : 10/10/2007

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Devendra Singh Dev for the petitioner.

Since the criminal misc. petition has been dismissed, the stay petition also stands dismissed.

(H.R.PANWAR),J.

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